

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

AGF MARINE AVIATION &)
TRANSPORT,)
)
Plaintiff,)
)
v.)
)
RICHARD C. CASSIN,)
)
Defendant,)
)
CIT GROUP/SALES FINANCING,)
INC., and UNITED STATES OF)
AMERICA SMALL BUSINESS)
ADMINISTRATION,)
)
Intervenors.)
_____)

Civil No. 2001-49

ATTORNEYS:

Gregory H. Hodges, Esq.
For the Plaintiff,

Michael L. Sheesley, Esq.
For the Defendant,

Joycelyn Hewlett, AUSA
*For the Intervenor United States of America Small Business
Administration,*

Carol G. Hurst, Esq.
For the Intervenor CIT Group/Sales Financing, Inc.

ORDER

GÓMEZ, C.J.

AGF Marine Aviation & Transport's ("AGF") has moved to correct an error in the Court's summary judgment for AGF.

AGF brought this action to void a marine insurance policy held by defendant Richard Cassin ("Cassin"). The policy covered a yacht (the "Falcon") owned by Cassin that sank off the coast of Grenada. Citi Group/Sales Financing, Inc. ("CIT"), was granted

leave to intervene in this action in October, 2001, as a first priority lienholder on the vessel. The United States Small Business Administration ("SBA") was granted leave to intervene in May, 2002, as a second priority lienholder.

After the Falcon sank, Cassin sought indemnity under his insurance policy with AGF. AGF thereafter filed this action seeking a declaration from this Court that the policy was void *ab initio*.¹ AGF later filed a motion for summary judgment against Cassin.² The Court granted AGF's motion (the "Memorandum Opinion").³ AGF now seeks to correct an error in the Memorandum Opinion pursuant to Rule 60(a) of the Federal Rules of Civil Procedure ("Rule 60(a)").

Rule 60(a) provides:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

FED. R. CIV. P. 60(a). The rule "encompasses only errors

¹ AGF contended that while investigating whether to honor the insurance policy after Cassin submitted his claim, it discovered facts regarding the purchase price of the Falcon that were allegedly misrepresented by Cassin on his application. Specifically, AGF asserted that it had learned that the purchase price for the Falcon was overstated by Cassin when the insurance policy was drafted.

² (See Pl.'s Mot. for Summ. J., July 29, 2004.)

³ (See Mem. Op., Jan. 23, 2007.)

mechanical in nature, apparent on the record, and not involving a substantive error in judgment." *Pfizer Inc. v. Uprichard*, 422 F.3d 124, 129-30 (3d Cir. 2005) (citing *Mack Trucks, Inc. v. Int'l Union*, 856 F.2d 579, 594 n.16 (3d Cir. 1988)) (internal citations omitted).

In the section of the Memorandum Opinion entitled "Factual and Procedural Background," the Court stated:

In March, 2000, Cassin submitted an insurance application to AGF for the purpose of obtaining marine insurance for the Falcon. Cassin submitted the application to AGF through his underwriting agent, TL Dallas (Special Risks) Ltd. of Bradford, England ("TL Dallas").

AGF Marine Aviation & Transp. v. Cassin, Civ. No. 2001-49, 2007 U.S. Dist. LEXIS 6749, at *2 (D.V.I. Jan. 22, 2007).

The Court inadvertently used the word "his" when the Court intended to use the word "its." The possessive pronoun was intended to refer to the party preceding its use--AGF. Indeed, that reference is consistent with the undisputed facts in this case, which indicate that Cassin completed an application for the insurance policy and submitted it to his agent, Theodore Tunick & Company ("Tunick"). Tunick, in turn, submitted the application to AGF's underwriting agent, TL Dallas. (See Pl.'s Mem. of Law in Supp. of Mot. for Summ. J. 5.)

For the reasons stated above, it is hereby

ORDERED that the motion is **GRANTED**; and it is further

ORDERED that the second sentence of the above excerpt from the Memorandum Opinion dated January 23, 2007, shall read as

follows:

Cassin submitted the application to AGF through its underwriting agent, TL Dallas (Special Risks) Ltd. of Bradford, England ("TL Dallas").

Dated: December 5, 2007

S_____
Curtis V. Gómez
Chief Judge

Copy: Hon. Geoffrey W. Barnard
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